

Larry Lydell Bell Sr.
SWISS #18924
11540 N.E. Inverness Drive
Portland, OR 97220

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In Rem

MULTNOMAH COUNTY CIRCUIT COURT FOR
THE FOURTH JUDICIAL DISTRICT IN OREGON;
THE OFFICIAL BOND SECURED BY AND FOR THE
FOURTH JUDICIAL DISTRICT POS. NO. 12
(a Public Judicial Office Secured Under
Official Security Bonds, Sureties and
Insurance Bonds); JOHN DOE SURETY
COMPANY; STATE TREASURY OFFICE (Issues
all state bonds)

LARRY LYDELL BELL SR.,

Plaintiff,

v.

MULTNOMAH COUNTY CIRCUIT COURT FOR
THE FOURTH JUDICIAL DISTRICT IN OREGON;
ITS ADMINISTRATORS, COMMISSIONERS AND
OFFICERS; JANICE R. WILSON (Multnomah
County Circuit Court Judge); MULTNOMAH
COUNTY DISTRICT ATTORNEY'S OFFICE,

Defendants.

CV'08 - 928 AA
Case No. _____

CIVIL RIGHTS COMPLAINT

(42 U.S.C. § 1983; § 1985 § 1986
and § 1988)

(Demand Trial By Jury)

This is a civil rights action brought by the plaintiff Larry Lydell Bell Sr., an individual person and citizen of the United States of America, against various agencies, corporations, municipalities, judicial officers and administrators for unnecessary rigor, malicious prosecutions, conspiracies, meeting of the minds

in a clandestine manner, vindictive and racial discriminatory sentencing practices, pain and sufferings, and collusion and fraud. Plaintiff has had his sentence invalidated by the Oregon Court of Appeals in 2002, and again by federal habeas corpus in 2007.

Plaintiff brings his action under the auspice of 42 U.S.C. § 1983, § 1985, § 1986 and § 1988. Plaintiff also invokes the provisions of the in rem proceedings with regards to the official bonds, securities and surety bonds, surety companies that insure the office of the public and judicial officers, as well as the holders in due course.

1.

JURISDICTION

This Court has jurisdiction to hear these claims pursuant to 42 U.S.C. § 1983; § 1985; § 1986; and § 1988; as well as under 28 U.S.C. § 1331 (federal question); § 1332 (corporation, insurer deemed as citizen of the State where it has principal place of business); § 1343 (civil rights and deprivation of equal rights and privileges in furtherance of conspiracy). The Plaintiff and Defendants, as well as the allegations and acts all occurred within the territorial jurisdiction of this Court. Plaintiff further invoke the in rem proceedings.

2.

PARTIES

Defendant In Rem Multnomah County Circuit Court's Secured Official Bond, Sureties, Insurance Bonds, Surety Company and holder in due course, are defendants in "res" to meet the demands of constructive possession res, without either actual or constructive possession, however, the Court may adjudicate the rights of the herein res, that should be registered with the Oregon State Treasury Office.

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3.

Plaintiff Larry Lydell Bell Sr., is a resident of the City of Portland, in Multnomah County, State of Oregon, United States of America, and a United States Citizen, under the Constitution of the United States of America.

4.

Defendant Multnomah county Circuit Court, is a judicial entity of the State of Oregon, a political subdivision of the Judicial Branch of Government, under the Fourth Judicial District of Oregon, sitting as a Multnomah County municipality and incorporated within the State of Oregon. It is being sued under its corporate and official municipal and as a political subdivision that is responsible for overseeing and assuring bonding and insuring its employees meet such requirement.

5.

Defendant Janice R. Wilson, is an elected official on the Multnomah County Circuit Court Bench, under the Fourth Judicial District in Oregon Position number 12, and a judicial officers of the Multnomah County Circuit Court. She is being sued in both her judicial and official capacity and in her individual capacity.

6.

Defendant Multnomah County District Attorney's Office, are the prosecuting attorneys and are being sued in both their judicial and official capacity as well as, in their individual capacity.

7.

PLAINTIFF'S ALLEGATIONS

That at all times relevant to this complaint the Defendant's individually and in their official capacity were acting under the color of state law and at certain times relevant to this complaint the defendants entered into a meeting of the minds under a clandestine scheme against the Plaintiff.

8.

(Heck's Favorable Termination Rule)

Plaintiff alleges that his sentence for all purposes relevant to this complaint has been reversed on direct appeal and called into question by a federal court's issuance of a writ of habeas corpus. See State v. Bell, 181 Or.App. 456 (2002) and Bell v. Hall, U.S.D.C. Civ. No. 1784-MO (Or. 2007).

9.

Class Based Animus

(Racial Bias And Discrimination In Sentencing Practices)

Plaintiff alleges that statistically proven data reveals that African-Americans are given larger and longer disproportionate sentences than White-American and other races in Multnomah County Circuit Courts, and because of this practice, policy, custom, and usage he was given a disproportionate sentence of fifty (50) years (a release date of March 6, 2049) for arson in the first degree, for damages of One Hundred Seventy-five Dollars (\$175) to some bedding material (based solely on the fact that he is African-American).

10.

Plaintiff alleges that this illegal and unconstitutional sentence was vacated and remanded for resentencing by the Oregon Court of Appeals. See State v. Bell, 181 Or.App. 456 (2002). On appeal the Attorney General's Office conceded to sentencing error by Defendant WILSON.

11.

Plaintiff alleges that he was resentenced by Defendant WILSON in October of 2002, and received an upward durational departure to twenty (20) years. (Release date of March 6, 2019). See Bell v. Hall, U.S.D.C. Civ. No. 04-1784-MO (That sentence was found to be unconstitutional and was invalidated.)

12.

Plaintiff alleges that prior to the resentencing being invalidated by habeas corpus, it was brought to the attention of Defendant WILSON that the resentence violated the principle of law as outlined in Apprendi and Blakely. She refused to correct the erroneous sentence and claimed she "lacked jurisdiction," to correct the erroneous term in the judgment.

13.

Plaintiff alleges that a federal tribunal ultimately reversed the unconstitutional and erroneous term of sentence, as stated in paragraph 12.

14.

Emotional Distress

Plaintiff alleges that he sustained pain, suffering, and mental anguish as a result of the illegal and unconstitutional sentences that were reversed. Plaintiff further alleges that the continuous harrassment and consequences combined with the sever shock of the conscience, of having a release date of 2049, for damages to some bedding material estimated at \$175, has caused him unnecessary suffering.

15.

Plaintiff further alleges that he suffered overwhelming aguish as a result of the second imposition of an illegal sentence with a release date of March of 2019.

16.

Plaintiff alleges that in September of 2005, he was a plaintiff in a civil law suit in which Judge Janice R. Wilson was a principle defendant. That law suit was commenced well in advance of any knowledge that the criminal matter would be sent back to the Multnomah County Circuit Court for another resentencing. see Multnomah County Circuit Court Case No. 05-099400. The crux of that suit was

for specific performance of duties in office under the Oregon Declaratory Judgment Act. Defendant WILSON was served with summons and complaint in that action by the Multnomah County Sheriff's Office. However, she refused to recuse herself from participating in a third resentencing.

17.

Plaintiff alleges that Defendant WILSON present acts and conduct are outside of her judicial immunity, because she refused to recuse herself when an actual conflict of interest exists in resentencing Plaintiff and proposes to allow an empanelment of a new jury to resentence him to a greater sentence than the one he was subjected to prior to the federal court's reversal of the resentencing.

18.

Plaintiff alleges that the declaratory judgment proceeding was a civil action against a public body that named Judge Wilson as a defendant within the meaning as defined in ORS 30.642 to 30.650, giving rise to an actual conflict of interest in presiding over any criminal matter in which Plaintiff may be a defendant.

19.

Plaintiff alleges that Defendant WILSON is without jurisdiction to proceed in presiding over any issue whatsoever in the criminal matter of State of Oregon v. Larry Lydell Bell Sr., Multnomah County Circuit Court Case No. 99-03-31898, and because she continues to do so, it gives rise to unnecessary rigor, harrassment, and intentional presumption of vindictiveness against the herein Plaintiff.

20.

(Meeting Of The Minds And Collusion)

Plaintiff alleges that the present acts and conduct of attempting to empanel an unconstitutional jury and holding a trial against him in the future, results from a meeting of the minds between the Multnomah County District Attorney's Office

and Defendant WILSON to harrass, intimidation, vindictiveness, malicious prosecution, and to reimpose the unconstitutional sentences vindictively to 30 years.

21.

Plaintiff alleges that Defendant WILSON acting under the guise of the color of state law and under the cloak of her official capacity to further deprive Plaintiff of equal protection of the Constitution of the United States in concert with the Multnomah County District Attorney's Office, after receiving a federal judgment decree in the issuance of a federal writ of habeas corpus.

22.

Plaintiff alleges that Defendant WILSON can not stand under her cloak of judicial immunity when she refused to recuse herself, when she knew an actual conflict of interest results from her presiding over Plaintiff's criminal action, even after being made aware of such conflict of interest, or presumption of bias.

23.

Plaintiff alleges that the meeting of the minds and collusion started long ago, against the herein Plaintiff. It started when the prosecuting attorney from Multnomah County District Attorney's Office and Defendant WILSON constructively amended the indictment through the jury instruction. See Attachment "A"

24.

Plaintiff alleges that the instant that the Multnomah County Circuit Court, Defendant WILSON and the prosecuting attorney amended the indictment in Plaintiff's criminal case, the court lost jurisdiction. At that point in time, there is nothing that can cure that defect, Plaintiff further alleges the Multnomah County Circuit Court and Defendant WILSON has a jurisdictional defect, as such the court and Defendant WILSON is without jurisdiction over the Plaintiff criminal matter.

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25.

Plaintiff alleges that because of the unlawful clandestine scheme between the Defendants herein, in amending the indictment in the criminal proceedings (see Attachment "A") to different material facts than the ones in the indictment, based solely on the meeting of the minds of the Defendants, Plaintiff is presently being imprisoned unlawfully and awaiting a third resentencing to a tribunal without jurisdiction to do so, and as such, Defendants have divested any jurisdiction that may have existed, and is presently acting under a *de facto* court without jurisdiction.

26.

Plaintiff alleges that based solely on the conspiracy to broaden his indictment by Defendant WILSON and the prosecution's meeting of the minds and constructive amendment to charges that he was never indicted for, the Multnomah County Circuit Court, Multnomah County District attorney's Office and Defendant WILSON lacks jurisdiction over Plaintiff, and are not immune from civil liability for damages to Plaintiff in the present imprisonment and continuous harassment, prosecution, empanelment of a jury, *ex post facto* applications of the law, double jeopardy, and present unconstitutional imprisonment.

27.

Plaintiff alleges that Defendant WILSON as a judge does not enjoy judicial immunity for unconstitutional behavior when the facts are sufficient to grant Plaintiff's declaratory or injustice relief against her and all Defendants herein.

28.

(Double Jeopardy and Federal Intervention)

Plaintiff alleges that this Court has jurisdiction to enjoin and stay any further attempts by the herein defendants, from carrying out their clandestine unconstitutional scheme (that violates individual civil rights) in empaneling a

new jury to resentence Plaintiff again after nearly ten (10) years, to more time than his presumptive guideline sentence, as a violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

29.

Plaintiff alleges that the herein acts and conduct of the Defendants in concert gives rise to the "extraordinary circumstances" necessary to enjoin these acts and conduct to prohibit any further unlawful acts by defendants against Plaintiff.

30.

Plaintiff alleges that Defendants acting under the guise of color of state law and official capacity of their judicial offices to carry-out a vindictive vendetta to intentionally cause harm to Plaintiff under "special circumstances" involving "proven harassment" and instigating a new prosecution without first charging him, nor by indictment, under subterfuge of "enhancement or aggravating fact trial," to new material elements in addition to those presented in the underlying arson in the first degree trial.

31.

Plaintiff further alleges that the new trial before a new jury is scheduled to be held before Defendant WILSON under the clandestine scheme of "resentencing", whereas these new alleged material facts were not in the original or any other indictment or charging instrument to the underlying arson, as such these undertakings by the herein Defendants acting under the guise of state officials in **bad faith**, without hope of obtaining a valid conviction to these new alleged material facts ten (10) years after trial in a vexatious multiple prosecution.

32.

Plaintiff alleges that the herein circumstances surrounding the herein allegation against the defendants in concert gives rise to a presentation of

"special circumstances" justified for federal intervention to vindicate Plaintiff's civil rights and the double jeopardy clause.

33.

Plaintiff also alleges that this Court is free to hear the double jeopardy claims, because the Oregon Supreme Court considered the merits of these claims in a prior state court proceeding, and Plaintiff, further alleges that he will suffer irreparable injury in the absence of immediate federal court action, that gives rise to a violation of his civil rights.

34.

(Malicious And Vindictive Prosecution)

Plaintiff alleges that Defendants are initiating a criminal proceeding (enpaneling a different jury on alleged aggravating facts) in bad faith for the sole purpose of retaliation, because of two prior reversals in his underlying criminal matter.

35.

Plaintiff alleges that the Multnomah County District Attorney's Office is initiating without probable cause, or indictment an action under the color of state law (SB 528 [enrolled as Oregon Laws 2005, Ch. 463] § 23(1)) that was not in existence at the time of Plaintiff's commencement, nor at the time he had exhausted all his State court remedies, in the underlying criminal matter.

36.

Plaintiff further alleges that the initiation of the proceedings under SB 528 is in bad faith, in violation of ex post facto laws and just another attempt for a second time to unlawfully amend the indictment to a greater offense without grand jury presentment, causing Plaintiff injury and unnecessary harassment, embarrassment, and unnecessary expenses to Plaintiff, all in retaliation for

successfully having his sentences reversed.

37.

Plaintiff alleges that the Multnomah County District Attorney's Office provided written notice (to Plaintiff's criminal attorney, not the court, nine (9) years after the alleged facts and indictment) that it intends to seek a jury trial for an upward departure based on the number of aggravating factors that were not offered at the prior resentencing.

38.

Plaintiff alleges that Defendant WILSON has championed the cause and acts of the Multnomah County District Attorney's Office actions and conduct as described in the above paragraphs in the furtherance of their conspiracy against Plaintiff.

39.

In 2005, the Oregon legislature imposed an "emergency provision" known as SB 528, Oregon Laws 2005, Ch. 463, which is found in the preface to Oregon Revised Statutes, Ch. 136. It reads, in part, as follows:

Sec. 2 In order to rely on an enhancement fact to increase the sentence that may be imposed in a criminal proceeding, the state shall notify the defendant of its intention to rely on the enhancement fact by ... within a reasonable time after filing the accusatory instrument, providing written notice to the defendant of the enhancement facts and the state's intention to rely on it.

40.

Plaintiff alleges that the provision as outlined in paragraph 39, do not pertain to him and is being used as a camouflage in the furtherance of the conspiracy between the Defendants to retaliate against him, in violation of the ex post facto laws and Plaintiff's civil rights, and to continue their practice, policy, custom, and usage of racially disproportionate sentencing practices.

41.

Plaintiff further alleges that he is receiving this treatment based solely

in part on the fact that he is African-American, whereas, Multnomah County Circuit Court and District Attorney's Office have shown a prejudicial disposition towards that discernible group of people, by given African-Americans larger sentences than any other race of people. Plaintiff will submit substantial evidence at trial.

42.

Plaintiff alleges that his disproportionate sentence of 50 years for damages to some bedding material estimated at \$175 is on record as being one of the largest of sentences for such a small damage for arson in Oregon history.

43.

Plaintiff further alleges that because of the initial sentences and resentence were reversed he is now subject to vindictive prosecution through the scheme as outlined in SB 528, Oregon Laws 2005, Ch. 463 (in modum juratae) which is in violation of his civil rights.

44.

Plaintiff alleges that he has not been arraigned on the new material elemennts the prosecutor will rely on, nor has the required notice been submitted to the court or a grand jury. Plaintiff further alleges because of the meeting of the minds between the Defendants herein, they have suspended the due process and equal protection rights all in violation of Plaintiff's civil rights.

45.

Plaintiff alleges that the malicious conduct of the Defendants herein, as stated above is so egregious that it violates substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution.

46.

Plaintiff further alleges that the malicious and vindictive prosecution by Defendants herein and sentences of 50 years is so egregious to give rise to be a

conscience-shocking misuse of legal proceeding, that deprived him of rights secured under the Constitution of the United States.

47.

Plaintiff further alleges that Defendants as "government bodies" acting under the color of state law employed devices as shields (such as SB 528) to cover-up their intentional, knowing, reckless and criminal negligent violations of Plaintiff's individual civil rights under the Substantive and Procedural Due Process, Ex Post Facto, Double Jeopardy, and the Equal Protection Clauses of the United States Constitution.

48.

(Official Misconduct)

Plaintiff alleges that Defendants herein are public servants within the statutory meaning as that term is defined by state statutes, and the acts and conduct above mentioned herein gives rise to a crime of official misconduct in the first degree, because Defendants in concert with a meeting of the minds and intent to obtain the benefit of obstructing justice, by means of a clandestine undercover conspiracy to deny Plaintiff the equal protection of the laws of the United States Constitution, as well as fair sentencing practices, based on race and retaliation.

49.

Plaintiff further alleges that Defendants acted with vindictive intent to obtain the benefit of an unlawful sentence to the extent of causing Plaintiff harm in his person and liberty interests to be free from unconstitutional confinements, and to the detriment of his mental and physical harm.

50.

Plaintiff alleges that not only did the Defendants knowingly perform acts that constitute "unlawful and unauthorized exercise of their official duties,"

but they carried-out forbidden performances in illegally sentencing Plaintiff twice and continues to do so, for the third time at the present, by "the knowing performance of continuing acts that constitutes unauthorized exercise of the powers and opportunities of their official positions," under the guise of relying on the theory of "absolute immunity," in other-words the "untouchables."

51.

Plaintiff alleges that presently the Defendants are attempting to hold a jury trial on enhancement facts to the status of elements of a greater offense than the one found by the jury in October of 1999, or that was in the indictment, nor has he been arraigned on these new charges.

52.

(Tort Claims)

Plaintiff alleges that an agreement between the conspirators is not necessary to prove conspiracy, but may be inferred from acts done with a common purpose.

53.

Plaintiff alleges that on or about April 26, 2006 he filed a "Notice of Tort Claim" to Risk Management Division of the Oregon Department of Administrative services, along with Supporting Affidavit. See Attachment "B".

54.

Plaintiff put the State on notice that the State, its agencies, employees, representatives, holders of public trusts and officers have refused to adhere to constitutional mandates that required Plaintiff to be released from custody by September of 2006. The responsible and involved parties have refused to apply the constitutional mandates to Plaintiff based solely on his ethnicity, race and financial status, thereby discriminating against him in violation of the civil rights and excessive imprisonment. See Attachment "B"

55.

Plaintiff alleges that Defendants through various different state agencies are indirectly involved by turning their heads, therefore allowing and enabling Defendants in bad faith to cover-up the deprivation of his constitutional rights, and continuing to deprive him of his liberty, by means of knowingly using invalid and frivolous court Orders channeled through the Multnomah County Circuit Court and undersigned by Defendant WILSON.

56.

Plaintiff alleges that the Defendants have conspired with the various state agencies employees, representatives, holders of public trusts and officers to cover-up the injustice, false and excessive imprisonment, unconstitutional acts and conduct of Defendants herein through government agencies, state courts, including but not limited to the State's Governor's Office (see Department of Administrative Services [Risk Management] Claim No. L125239) of which were put on notice of the acts and conduct of Defendant WILSON and Multnomah County District Attorney's Office.

57.

Plaintiff alleges that in 2006, after being put on notice, the Governor's Office unequivocally insisted that Plaintiff proper remedy lies within a writ of habeas corpus (see Risk Management Claim No. L125239).

58.

Plaintiff alleges that he filed a writ of habeas corpus pursuant to the claims with the Oregon Risk Management request in the matter of Larry Lydell Bell Sr. v. Guy Hall, Umatilla County Circuit Court Case No. CV061381, that court denied the writ claiming its a post-conviction issue. Plaintiff further alleges that that court denies 99.9 percent of all habeas corpus proceedings coming before it.

59.

Plaintiff alleges that through his notice of tort and habeas corpus above mentioned he put the State, its agencies, employees, representatives, holders of public trust and officers on notice that in accordance with the jury finding in his underlying conviction for arson, and the sentencing scheme as outlined in Apprendi and Blakely, that his prison term of incarceration requires his release no later than September 7, 2006, and any further imprisonment would require monetary damages of at least \$1,500 per day thereafter.

60.

Plaintiff further alleges that this Court may hear his State tort claims under the provisions of false and excessive imprisonment as a violation of his United States Constitutional rights.

61.

Plaintiff alleges that he has a liberty interest in being released, as of September 7, 2006, in accordance with the applicable statutes that speak in mandatory language as was outlined in the memorandum of law set forth in both the notice of tort claim and in the habeas corpus proceedings.

62.

Plaintiff alleges that the Defendants herein are engaged in a conspiracy against him to cover-up the fact that his release date and the maximum sentence in accordance with the Oregon Sentencing Guidelines has expired along with the present invalidation of all sentences that were at issue in the issuance of the federal writ of habeas corpus.

63.

Plaintiff alleges that he is presently being unlawfully confined in the Multnomah County Inverness Jail under the pretense of awaiting a jury trial on

additional alleged facts that are not in an indictment, or been charged with through any tribunal, nor has he been arraigned on them, all under the guise of resentencing, which gives rise to false imprisonment and Defendant WILSON and the Multnomah County District Attorney's Office have engaged in collusion to continue the false imprisonment, as well as an unlawful further prosecution to maliciously detain and confine Plaintiff under the false allusion of resentencing.

64.

Plaintiff alleges that the Defendants in concert in an attempt to upward depart his sentence for an additional ten (10) years of the presumptive sentence, falsely entered into the trial court register (OJIN) at (#84) that he had a "Hearing Probation V Scheduled 10/22/99 1:15 PM TJRW WILSON" and on the record at the original sentencing Defendant WILSON actually stated that the upward departure was based on Plaintiff being on probation at the time, however, this was false, and Plaintiff was not on probation and never appeared before Defendant WILSON for a Probation Violation Hearing. See Attachment "C".

65.

(Actions on Official Bonds)

Plaintiff alleges that Defendants in rem are official bonds, security, sureties, and deposits secured for the undertaking of insurance against the official officers and judicial post/position and particularly the Fourth Judicial District of Oregon's post/position 12.

66.

Plaintiff alleges that Defendants are public officer, judicial officers and their actions and conduct by official misconduct of neglect of duty forfeited an official undertaking or security of the public officer that renders the sureties of the public officer liable thereon and such injury to Plaintiff was by the

misconduct or neglect of duties of office.

67.

Plaintiff alleges that in the event the judicial officer claims an official immunity, however, in such an event the official bond, official undertaking or other security of the public officer are liable thereon, and may still be rendered liable for official delinquencies and the injuries caused by that office.

68.

(In Rem And In Personam)

Plaintiff alleges that an action in rem or the alternative in personam may be brought against the Multnomah County Circuit Court's Secured Official Bonds, Securities, Insurance Bonds, Surety Companies and holders in due course, and any person who may be liable.

69.

Plaintiff alleges and asserts that the in rem proceedings are not just applicable to vessels to enforce maritime liens, it also encompasses proceedings analogous thereto such as the herein Official Bonds as defined in ORS 30.210 and ORS 30.220, or an instrumentality thereof may proceed on in rem principles or in the alternative in personam.

70.

Plaintiff alleges that the property (official bonds) that are the subjects of this action are documents held in trust, sureties, in surety companies bonding the office of the Defendants, whereas, no prior judgment against principal and satisfaction thereof is necessary to have the clerk issue a warrant with summons directing any person controlling the documents (in alternative to submit, an exact true copy of the res certified as such), to be brought within the control of this Court.

71.

Plaintiff alleges that certain claims herein may be cognizable under the Federal Rules of Civil Procedure Rule 23(a), as such Plaintiff reserves the rights to proceed in such manner if it becomes apparent.

72.

CLAIMS

FIRST CAUSE OF ACTION

(Racial Discrimination)

Plaintiff by this reference incorporates paragraphs 1 through 70, the same as if restated herein, and alleges that the Defendants acts and conduct therein constitutes a willful, intentional and knowing racial discrimination against Plaintiff in sentencing practices, because he is African-American and against the laws of the United States of America in regards to his civil rights:

A) Plaintiff further alleges and asserts that Defendants violated the statutory provisions of federal laws that protects all persons in the United States in their civil rights and for their vindication under the laws to be free from the acts and conduct alleged herein, whereas, Plaintiff alleges that Defendants acting under the color of state law, to enforce policies, practices, customs and usage of racial and institutional racial discriminatory practices in criminal sentencing, in particular for the purpose of depriving, either directly or indirectly, African-Americans as a class of people from the equal protection of the laws and in fair sentencing practices.

B) Plaintiff, further alleges that the wrongs afore mentioned were carried-out by way of conspiracy and the herein Defendants either committed them, or had the power to prevent or aid in preventing the commission of the same, and they neglected to do so, or they refused to do so, thereby they are liable to Plaintiff

for the injuries and damages they caused by such wrongful acts.

73.

SECOND CAUSE OF ACTION

(Equal Protection Of The Laws)

Plaintiff by this reference incorporate paragraphs 1 through 70, the same as if restated herein and alleges that Defendants acts and conduct of two or more persons conspired for the purpose of depriving Plaintiff as a member of a class based animus of the equal protection, privileges and immunities under the laws, or hindered the constituted State of Oregon from giving Plaintiff or securing that Plaintiff will receive the same treatment and equal treatment as others that received a sentence under Oregon Revised Statutes (ORS) 164.325 (Arson in the First Degree) and to have been sentenced within the presumptive sentencing grid-block.

A) Plaintiff, further alleges and asserts that Defendants engaged or caused to be done the above referenced acts in the furtherance of the object of a conspiracy, whereby Plaintiff was injured in his person, as well as his liberty and deprived of having and exercising his rights and privileges as a citizen of the United States, Plaintiff asserts that he was so injured and derived as to constitute a liability for recovery of damages against any and all Defendants herein.

74.

THIRD CAUSE OF ACTION

(Malicious And Vindictive Prosecution)

Plaintiff by this reference incorporate paragraph 1 through 70, the same as if restated herein, and alleges that the Defendants acts and conduct therein constitutes malicious and vindictive prosecution, in violation of the double jeopardy principles and based on vindictiveness, because of two consecutive reversals of the sentences in the underlying criminal case, in violation of Plaintiff's civil rights under the United States Constitution:

A) Plaintiff, further alleges and asserts that his sentence of 50 years was reversed on direct appeal to the Oregon Court of Appeals and his sentence of 20 years was reversed by federal habeas corpus as stated in paragraph 8.

See supra, at p. 4.

B) Plaintiff, further alleges and asserts that he sustained emotional distress as a result of the unlawful and unconstitutional sentences, and the continued malicious and vindictive prosecutions of sentences without probable cause, or being arraigned on aggravating factors, or grand jury presentment as to the aggravated charge of "Aggravated Arson in the First Degree."

C) Plaintiff, further alleges and asserts that Defendant WILSON is without jurisdiction to preside over such matters and the Multnomah County District Attorney's Office maliciously persist in bringing these frivolous proceedings in violation of the Constitution of the United States.

D) Plaintiff, further alleges and asserts that the above mentioned Defendants needs to be restrained from persistent malicious and vindictive prosecutions, each and ever time the higher courts vacate the sentences imposed by Defendants, as such they are liable to Plaintiff for the injuries and damages they caused by such wrongful acts.

75.

FOURTH CAUSE OF ACTION

(Unlawful And Excessive Imprisonment)

Plaintiff by this reference incorporates paragraphs 52 through 64, the same as if restated herein and alleges that defendants acts and conduct in the furtherance of the object of a conspiracy, whereby Plaintiff was and continues to be injured in his person, and in his liberty interest by being unlawfully detain and imprisoned after the incarceration term of his sentence has expired, and

particularly the term in accordance with the jury's finding that convicted him of arson (Oregon's Sentencing Guidelines 10 B):

A) Plaintiff further alleges and asserts that Defendants violated the statutory provisions of federal laws that protects all persons in the United States in their civil rights and for their vindication under the laws to be free from unlawful and excessive imprisonment in violation of the due process and cruel and unusual punishment clauses of the United States Constitution, wherefore, Defendants are liable to Plaintiff for the injuries to his person and liberty for damages they caused by such wrongful acts.

76.

FIFTH CAUSE OF ACTION
(Emotional Distress)

Plaintiff by this reference incorporates paragraphs 1 through 70, the same as if restated herein and alleges that Defendants' acts and conduct as alleged therein caused him pain, suffering, mental anguish, anxieties and constant rise in blood pressure, all as a result of Defendants' continuous harassments, unlawful and unconstitutional sentences, unlawful and excessive imprisonment, conscience shocking sentences and persistent acts and wrongs engaged against him in violation of his constitutional rights to be free from unfair treatment based on race and retaliation, engaged against him by the herein Defendants.

77.

SIXTH CAUSE OF ACTION
(**In Rem And Alternatively In Personam**)

Plaintiff alleges and assert that the property is registered with the Oregon Treasury Office and is in the form of legal documents: Official Bonds, Secured Bonds, Sureties, Insurance Bonds, Surety Companies and holder in due course, and said properties are within the district for this Court's exercise of jurisdiction over
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the properties:

A) Plaintiff, further alleges that under Oregon's statutory provisions of ORS 30.210 and ORS 30.220, the said res may be had, or in the alternative this Court may seize exact and true copies of the original documents.

B) Plaintiff, further avers that by separate pleadings a formal request is attached hereto and by this reference incorporated herein a "Request for Arrest Warrant," in the name of the United States and as promptly as possible to issue a summons and a warrant for the arrest of the Official Bonds, Secured Bonds, Sureties, Insurance Bonds, Surety Companies and holder in due course, and said properties are within the jurisdiction of this Court.

78.

SEVENTH CAUSE OF ACTION

(Official Misconduct)

Plaintiff by this reference incorporate paragraphs 1 through 70, the same as restated herein and alleges that Defendants as "government bodies" acted under color of state law employed unconstitutional clandestine schemes as shields (E.g., SB 528) to cover-up their real intent, by knowingly, recklessly and with criminal intent and negligence violated Plaintiff's individual rights under the substantive and procedural due process, ex post facto, double jeopardy, and equal protection clauses to the United States Constitution:

A) Plaintiff further alleges and asserts that Defendants herein are Public Servants within the statutory meaning of that term and they acted with vindictive intent to obtain the benefit of imposing unlawful sentences to the extent of causing Plaintiff harm in his person and liberty interests to be free from unnecessary government rigors and unconstitutional deprivation of secured rights, not to be subjected to unconstitutional confinements and to the detriment of his

mental health and physical wellbeing.

B) Plaintiff further alleges and asserts that Defendants knowingly performed the above mentioned acts that constituted unlawful and unauthorized exercise of their official duties, by carrying-out the herein mentioned forbidden performances in illegally sentencing Plaintiff and attempting to further carry-out additional unconstitutional acts in sentencing Plaintiff, all to purposely cause him harm that so injured and deprived him of his civil rights as to constitute a liability for recovery of damages against all Defendants herein.

79.

EIGHTH CAUSE OF ACTION

(Claim For Injunctive Relief)

Plaintiff by this reference incorporated paragraphs 28 through 34, the same as restated herein and alleges that Defendants' acts and conduct herein presents "special circumstances" as outlined throughout this complaint of "proven harassment" in bad faith with vindictive retaliation in violation of Plaintiff civil rights and ex post facto laws, duouble jeopardy — now in the pretrial — whereas, the additional material element allegations have not been directly charged against him, through indictment, grand jury proceeding, nor has he been arraigned, the statute of limitations has ran out on these new alleged material elements to substantiate an aggravated charge, and the Defendants are proceeding without hope of actually obtaining a valid conviction or sentence to this upgraded charge to this aggravated version of arson. Wherefore, Plaintiff respectfully request immediate intervention and injunctive relief.

80.

RESERVATION OF RIGHTS TO AMEND

Plaintiff reserve the rights to assert additional claims.

RELIEF

WHEREFORE, Plaintiff prays for the following relief against all Defendants herein:

1. Injunctive and immediate intervention to restrain Defendants from any continued violation of Plaintiff's Civil Rights and particularly from empaneling an unconstitutional jury to prevent Plaintiff's release and hold him up in the State courts as a vindictive and cruel punishment.
2. Declaratory judgment to determine the rights of the herein Plaintiff and the herein controversy that said Defendants have violated the civil rights of the Plaintiff and are liable for such injuries.

Monetary

3. Compensatory Damages:

A. Racial Discrimination In Sentencing	\$50,000,000.
B. Excessive Imprisonment (per day)	\$ 2,500.
C. Intentional Infliction of Emotional Distress	\$15,000,000.
D. General Damages	\$
E. Actual Damages	\$ 2,500,000.
F. Punititive Damages	\$95,000,000.

Verification

I, the undersigned plaintiff, state under the penalty of perjury that I have prepared, read and know the contents of this complaint and requested in rem proceedings and that the same is true and correct to the best of my knowledge and beliefs, and is submitted in good faith and not for the purposes of any other.

RESPECTFULLY SUBMITTED BY AND DATED this 1st day of August, 2008.



LARRY LYDELL BELL SR.
Plaintiff, pro se

ATTACHMENT "A"

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1 free to disregard them, but that's sort of covered in the 2 evaluating witness testimony.	1 First Degree – I would say the charged crime of Arson in 2 the First Degree has, as a lesser included offense, the 3 crime of Reckless Burning. To establish Reckless 4 Burning, the State must prove each of the following three 5 elements: One, the act occurred in Multnomah County; 6 two, the act occurred on or about March 7, 1999; and, 7 three, Larry Bell, Sr., recklessly damaged the property 8 of Narendra Patel, doing business as Mel's Motor Inn, by 9 fire. And, by the way, I was reminded as I was working 10 on this that in the main elements instruction for the 11 three charged crimes, it says "the defendant," and I 12 think I ought to say "Larry Bell, Sr.", and insert his 13 name, and I intend to do that.
3 THE COURT: Yeah. And I think that's other 4 than the defendant's request for 2005, and I wasn't sure 5 where that really fit in.	14 Anyway, after that, I will give the order of 15 deliberation instruction, as proposed by the State, and 16 the uniform instructions. The way the pattern usually 17 goes is then I would give 1010, which is an explanation 18 and comparison of the elements of the charged offenses 19 and a lesser included offense, and I haven't gotten 20 anywhere with that. That's always the one that's the 21 most time-consuming.
6 MS. WATKINS: Well, I think, again, it leaves 7 the jury up to, you know, since they're the finders of 8 facts, if they feel that the burning of the blankets was 9 reckless rather than intentional, then they could find 10 him guilty of Reckless Burning versus Arson I.	22 Does anybody have a proposal on that?
11 THE COURT: Are you asking for a lesser 12 included offense?	23 MS. WATKINS: Not right now.
13 MS. WATKINS: Well, that was the original 14 theory. Are you still wanting me to include that?	24 MR. ASHTON: Well, it's defense's request.
15 THE DEFENDANT: Yes.	25 What other courts have done is just to point out what
16 MS. WATKINS: Mr. Bell still wanted me to 17 include that.	
18 THE COURT: Well, if I give a lesser included 19 offense instruction, I also have to tell the jurors that 20 they have to acquit first --	
21 MR. ASHTON: I have a -- a proposal on that.	
22 MS. WATKINS: Is this the one right after...	
23 MR. ASHTON: (Handing documents to Counsel and 24 Court).	
25 THE COURT: Are we going to get through this	
Page 199	Page 201
1 and arguments tonight?	1 elements are in common, which ones are not --
2 MR. ASHTON: Your Honor, I -- I also have a -- 3 in light of the questioning regarding the -- whether or 4 not the structure was damaged, I have some law that I'd 5 like to discuss and draft up a special requested 6 instruction on that as well. So...	2 THE COURT: I know. The problem is when you've 3 got three counts of the same charge and --
7 THE COURT: So the answer is... It's two 8 minutes after 4:00. We're not --	4 MR. ASHTON: Right.
9 MR. ASHTON: Right.	5 THE COURT: -- under different theories, that's
10 THE COURT: I'm going to excuse the jurors for 11 the evening. I'll ask them to be back here at 9:30 12 tomorrow morning. We'll stay and finish everything so we 13 can roll right into the conclusion of the case tomorrow.	6 what makes it complicated in this case. Normally it's 7 not too bad.
14 And, actually, as soon as they're clear, we're going to 15 take a break --	8 Well, I'll work on that.
16 MR. ASHTON: Okay.	9 (Pause.)
17 THE COURT: -- and then we'll finish this.	10 THE COURT: Okay. Well, let me tell you where
18 Brian, why don't you let them go. Tell them I said not 19 to talk about this case.	11 I think we are and what I will be plugging into this.
20 THE CLERK: I will tell them that. 9:30?	12 In Count 1, the charged crime of Arson in the
21 (Recess: 4:03-4:30 p.m.)	13 First Degree requires proof beyond a reasonable doubt 14 that the defendant acted intentionally and that he 15 damaged protected property. The lesser included offense 16 of Reckless Burning requires proof of recklessness, not 17 intent, and that the property damaged was plain property, 18 not required to be protected property as that's defined.
22 THE COURT: Well, we were last working on the 23 lesser included offense instructions. The way I propose 24 to do this is to start with a form of -- something based 25 on Uniform 1008. The charged crimes of Arson in the	19 In Count 2, to prove the charged offense of 20 Arson in the First Degree, the State is required to prove 21 that the act was done intentionally; what was damaged by 22 fire was a dwelling; and that that act recklessly placed 23 protected property in danger of damage.
	24 MR. ASHTON: A dwelling or contents, as I -- 25 all we're required to prove is that it's property, and

Page 202	<p>1 then in our indictment, I think we said certain property, 2 to wit a dwelling and contents, but that's "or contents."</p> <p>3 THE COURT: Okay. And in Count 3, to prove 4 Arson in the First Degree, as alleged by the State, the 5 State would have to prove that the act was done 6 intentionally; and that the intentional act damaged 7 dwelling or contents; and recklessly placed another 8 person in danger of physical injury, whereas, again, 9 Reckless Burning requires recklessly, not intentionally, 10 and damage to property without any of those additional 11 matters. Does that --</p> <p>12 MR. ASHTON: That sounds fine, Your Honor. 13 THE COURT: Well, I'll get that in writing. 14 (Pause.) 15 Okay. Is there something else, Ms. Watkins? 16 MS. WATKINS: No. 17 THE COURT: Okay. 18 Now, the State, I understand, is going to ask 19 for another special requested instruction based on the 20 commentary in the criminal code. 21 MR. ASHTON: Right. I was struggling to 22 find -- well, I was unable to find a definition of what 23 constitutes a structure, and I found this 1971 criminal 24 code where they're discussing the legislature -- or the 25 Legislature is discussing what they intended to do with</p>	Page 204	
Page 203	<p>1 these arson statutes, and it appears to me that, with the 2 underlying rationale for these crimes being the 3 protection of life or safety of humans, um, then I don't 4 think it's an accurate statement of the law for there to 5 be arguments that carpet inside of a dwelling is not part 6 of the protected property. In other words, the -- I have 7 a proposal that I would submit that could be applicable 8 to Count 1, and in this case, we had testimony by 9 Mr. Patel that the wood flooring underneath the carpet 10 was scorched or burned as he saw it, and it's going to be 11 our argument that that's sufficient. It's my belief that 12 the Legislature intended the fixtures that are affixed to 13 structures and buildings customarily occupied by people 14 to be considered part of the structure, but I can't find 15 anything that says that in so many words.</p> <p>16 So I would ask the Court to read this or a 17 variation of this and direct the jury to consider it as 18 to Count 1. My misgivings are that I believe that the 19 general term "damage" should be viewed to include smoke 20 damage, and I can conceive of situations where protected 21 property is damaged by smoke, and my view is that that 22 should still be an Arson in the First Degree as damage to 23 protected property, although this commentary seems to 24 indicate there has to be some kind of burning.</p> <p>25 THE COURT: Ms. Watkins.</p>	Page 205	<p>1 the evidence, and it's inappropriate.</p> <p>2 THE COURT: Well, I don't think this proposed 3 instruction tells them that the carpet is part of the 4 structure. If anything, I think this instruction tells 5 them something more narrow than the broader instruction, 6 and that more narrow thing is that there must be an 7 ignition of some part of the protected property resulting 8 in a perceptible change in its composition, which would 9 run contrary to the smoke analysis.</p> <p>10 MR. ASHTON: Right. That's fine.</p> <p>11 THE COURT: Mr. Ashton is saying he thinks this 12 commentary provides for a narrower definition than the 13 broader definition of arson in the statutory language 14 alone.</p> <p>15 In fact, just the language of the uniform 16 instruction, based on the statute, intentionally damaged 17 the property by starting a fire, and the property was 18 protected property could encompass -- you can start a 19 fire in a metal container that you bring in that fills 20 the place with smoke and ruins everything in it. That, I 21 would think, would fall under the definition of 22 intentionally damaging property by starting a fire, but 23 under the commentary under this proposed instruction 24 wouldn't satisfy Arson in the First Degree. The fire 25 itself has to go to some part of the structure.</p>

ATTACHMENT "B"

Larry Lydell Bell Sr.
SID #4696049
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

April 26, 2006

NOTICE OF "TORT CLAIM"

TO: Risk Management Division
Department of Administrative Services
1225 Ferry Street S.E., U150
Salem, OR 97301-4287

RE: Tort Claim Notice of Excessive Imprisonment.

Dear Risk Management Representative:

Pursuant to the provisions of ORS 30.275 and within 180 days of a perceived injury and loss of liberty caused by state officials, officers, employees and/or agents this office is being notified of my intent to initiate legal action against state officials and/or agencies involved in the injury/loss/deprivation outlined herein, unless timely and appropriate redress is provided to me.

The date of injury, loss, and deprivations of rights are effectively occurring on September 7, 2006, and thereafter until the release from custody. The amount of damages accruing at one thousand five-hundred dollars (\$1,500.00) a day until released from custody.

The State of Oregon, its agencies, employees, representatives, holders of public trusts and officers have refused to adhere to constitutional mandates that requires Claimant be released from the physical custody of the Department of Corrections by September 7, 2006. The responsible and involved parties have refused to apply the constitutional mandates to Claimant herein based solely on his ethnicity, race and financial status, thereby discriminating against him in violation of his civil rights, equal protection of the laws, due process, equitable treatment, liberty interest, excessive imprisonment and cruel and unusual punishment. All of these deprivations were carried out through a "meeting of the minds" between state official, agencies, employees, representatives, holders of public trusts and officers against Claimant, because of his specific "class based animus".

At the present time, all involved are in concert with one another in bad faith, to deprive and continue depriving Claimant of his liberty by means of an invalid and frivolous judgment order. See Supporting Memorandum of Law and Affidavit attached hereto and by this reference made a part hereof.

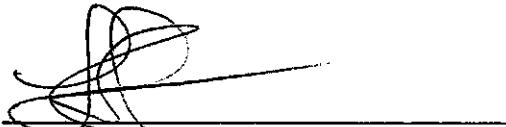
NOTICE OF TORT CLAIM
Risk Management Division
Department of Administrative Services
April 26, 2006
Page 2

Claimant Larry Lydell Bell Sr., has and/or will be injured by the above mentioned entities, Tort-feasor by knowingly and willfully sustaining an invalid and unconstitutional instrument so-called "Judgment of Conviction and Sentence" and the use of such falsifying documents to defraud the claimant Larry Lydell Bell Sr., as a means to substantiate the unconstitutionally excessive imprisonment. As such, **you are hereby notified of a tort claim, against all involved and responsible parties.**

If further information is desired, I can be contacted at the above-indicated address. Any offer of a method of resolving this claim should be directed to me at the same address.

DATED this 26th day of April, 2006.

Respectfully submitted,



Larry Lydell Bell Sr.
Claimant.

NAMES AND ADDRESSES OF DEFENDANTS

Oregon Department of Corrections
2575 Center Street, N.E.
Salem, OR 97310

Guy Hall, Superintendent
Two Rivers Corr. Inst.
82911 Beach Access Rd.
Umatilla, OR 97882-9419

Douglas M. Bray
Trial Court Administrator
Fourth Judicial District
Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, OR 97204-1123

Paul J. De Muniz
Chief Justice
Supreme Court Building
1163 State Street
Salem, OR 97310

Larry Lydell Bell Sr.
SID #4696049
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

**AFFIDAVIT
IN SUPPORT OF TORT CLAIM**

STATE OF OREGON)
) ss:
County of Umatilla)

I, Larry Lydell Bell Sr., being first duly sworn, depose and say:

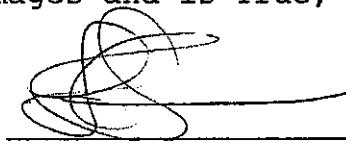
1. That I was tried to a jury in the Multnomah County Circuit Court Case No. 9903-31898, and found guilty of Reckless Burning (Lesser-included offense) and arson in the first degree, for an estimated total damage of one hundred seventy-five dollars (\$175.00); and the Claimant herein;
2. That the maximum sentence authorized for the conviction under the jury findings is in accordance with the Oregon Sentencing Guidelines, coordinates at 10B, for a maximum range of 116-120 months. See Memorandum of Law in Support of Petition for Habeas Corpus and Demand for Immediate Release, attached hereto and by this reference incorporated herein;
3. That it is apparent that the present Judgment of Conviction and Sentence exceeds the lawful statutory maximum, and Claimant has brought this to the attention of the responsible and involved courts, officers, agencies, employees, representatives, holders of public trusts, and all are involved and responsible as parties in concert and blatantly have allowed it and/or violated the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, to enforce, sustain and continue the excessive imprisonment, by means of a meeting of the minds with other state officials, employees, agencies, representatives, holders of public trusts, while knowingly applying an invalid judgment order that is in violation of Claimant's constitutional rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution to purposely incarcerate me through excessive unconstitutional imprisonment;
4. That I have brought it to the attention of the involved agencies, employees, representatives, holder of public trusts, and officers of the courts that are involved in this illegal

and excessive imprisonment by means of proper legal remedies and written notice, however, I believe them to have conspired with the initiator of invalid judgment order to sustain and continue the unconstitutionally excessive term of imprisonment;

5. That I have filed with the Multnomah County Circuit Court a Motion to Modify and Correct Erroneous Term of the Judgment (Case No. C99-03-31898), along with two direct appeals, a declaratory judgment action (Case No. 0509-09400), writ of mandamus proceedings, all to no avail, as though the state courts are working in concert to sustain invalid judgment and illegally excessive imprisonment, they are all put on notice;
6. That I have personally researched the Arson in the First Degree sentences throughout D.O.C, for the past six years and portions of Oregon's history in these regards and I found that the sentence handed down to me was the largest in Oregon's history for the amount of damage of one hundred seventy-five dollars (\$175.00) estimated by owner of the Mel's Motor Inn (no threat to human life);
7. That I sincerely believe and will be able to prove that my sentence was handed down by racial motivation and the fact that I was indigent and unable to afford to pay for my own representation that precipitated into the unconstitutional judgment and excessive imprisonment;
8. That on September 6, 2006, my release will become immanent and that all the above mentioned entities have, at one time or another, been and/or are in concert with the other, forming a "meeting of the minds" to obstruct my liberty by means of sustaining the illegal and unconstitutional "instrument" carried out in the form of a "judgment" to substantiate an excessive imprisonment, the above and herein mentioned entities acted outside of the law and their judicial, professional, and public trusts to enforce and carry out the very instrument that abridges both state and federal laws, a custom, usage, and practice under the color of state law;
9. That I believe and will prove that all of the above mentioned acts, practice, usage and customs were carried out and done in bad faith with a disregard to human dignity, honor and indifference to the constitutions of both state and the United States;
10. That all the involved and responsible parties agents, employees and above mentioned in their acts did commit constitutional impermissible application of the statutes, laws and/or policies as against the Claimant/Affiant;

11. That the acts of the the State of Oregon, its agencies, employees, representatives, holders of public trusts and officers have refused to adhere to the constitutional mandates as prescribed by the United States Constitution and its interpretation in Apprendi/Blakely, and such acts did cause injury and damages being that they have allowed for excessive imprisonment;
12. That said agent/employee and responsible parties stipulated and agreed to the violations, misapplication and the damages as stipulated via the agreement as established by Conditional Acceptance, and due notice being given through the ordinary course of the law, served on the agent/employee through the judicial process and remedies of law, to correct the wrongs and invalid instruments.

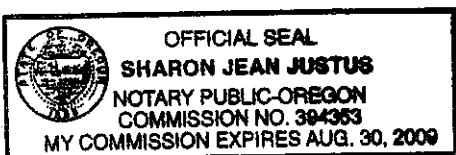
WHEREFORE, this Affidavit in Support of Tort Claim supports Claimants' Notice of Tort Claim and damages and is True, and Certain.



Larry Lydell Bell Sr.
Affiant/Claimant

THIS instrument was acknowledged before me on: April 26, 2006,
By: Larry L. Bell

Sharon Jean Justus
NOTARY PUBLIC
My Commission Expires 08-30-09



STATE OF OREGON)
) ss.
County of Umatilla)

PROOF OF SERVICE

I certify that on the 26th day of April, 2006, I served a copy of the attached Notice of Tort Claim to the persons or parties listed below, via United States Postal Service, postage-paid, addressed as follows:

Inmate Claims Unit
Risk Management Division
Department of Administrative Services
1225 Ferry Street, S.E., U150
Salem, OR 97301-4287

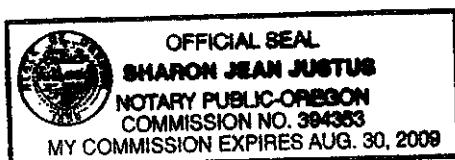


AFFIANT/CLAIMANT

SUBSCRIBED AND SWORN TO before me this 26th day of April,
2006, by Larry L. Bell.

Sharon Jean Justus
NOTARY PUBLIC

My Commission Expires: 08-30-09



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

In the Matter of the Application of)
Larry Lydell Bell Sr., for a Writ)
of Habeas Corpus:) Case No _____
LARRY LYDELL BELL SR.)
Plaintiff,) MEMORANDUM OF LAW IN
v.) SUPPORT OF PETITION
Defendant.) FOR HABEAS CORPUS AND
) DEMAND FOR IMMEDIATE
) RELEASE
GUY HALL, Supt. Two Rivers)
Correctional Institution,)
)

M E M O R A N D U M O F L A W

COMES NOW, Plaintiff Larry Lydell Bell Sr., by and through this Memorandum of Law and hereby offer it in support of his points and authorities for Habeas Corpus and demand for immediate release from custody.

I. Sentencing Scheme.

The sentencing guidelines controls the sentences for felonies committed after November 1, 1989. ORS 137.699. The Oregon Criminal Justice Council (commission) created the guidelines as administrative rules, but, because the legislature approved them in 1989, they have the authority of statutory law. State v. Langdon, 330 Or. 72, 74, 999 P.2d 1127 (2000); Or. Laws 1989, ch. 790 § 87.

1 **A. Historical Background.**

2 Under the guidelines, a sentencing judge was permitted to
3 impose an upward durational departure sentence greater than the
4 presumptive sentence, if the judge found "substantial and
5 compelling reasons" for such departure, so-called "aggravating
6 factors." OAR 213-008-0001; see also OAR 213-003-0001(8)(defin-
7 ing "durational departure" as "a sentence which is inconsistant
8 with the presumptive sentence as to term of incarceration ...").
9 This sentencing scheme provided a judge could not impose a depa-
10 rture sentence that exceeded more than twice the maximum duration
11 of the presumptive sentence or that exceeded the statutory
12 maximum indeterminate sentence described in ORS 161.605. See
13 OAR 213-008-0003(2).

14 In the present case Plaintiff was found guilty of Arson in
15 the first degree by a jury, in STATE OF OREGON v. LARRY LYDELL
16 BELL SR., Multnomah County Circuit Court Case No. 9903-31898.
17 Plaintiff objected to any upward durational departure sentence at
18 his sentencing as a federal constitutional requirement for a jury
19 trial and due process prohibited the trial court from imposing a
20 sentence greater than the "presumptive sentence", established in
21 the sentencing guidelines and determined by the seriousness of
22 the crime and his criminal history. He relied on the holding in
23 Apprendi v. New Jersey, 530 U.S. 466 (2000), as the presumptive
24 sentence was the statutory maximum sentence based on the jury
25 finding. See Sentencing Transcript, pp. 37-43 (October 14, 2002).
26 / / / / / /

1 B. The Presumptive Sentence is The Statutory Maximum
 2 Sentence Not The Indeterminate Sentence.

3 The presumptive sentence in this case is accorded at grid-
 4 block 10B, for a range of 116-120 months. The statutory maximum
 5 sentence is the "presumptive sentence." See Blakely v. Washington,
 6 542 U.S. 296 (2004).

7 The guidelines describe the presumptive sentence range as
 8 the "appropriate punishment" for a crime based on "the seriousness
 9 of the crime of conviction * * * and the offender's criminal
 10 history." OAR 213-002-0001(3)(d). A sentencing judge must impose
 11 a presumptive sentence * * * unless there are 'substantial and
 12 compelling' reasons in aggravation or mitigation * * *." State
 13 v. Davis, 315 Or. 484, 847 (1993).

14 The Sixth Amendment, as interpreted in Blakely, prohibits the
 15 trial court from imposing a sentence in excess of the presumptive
 16 sentence unless a jury finds the aggravating facts or the
 17 defendant effectively waives that jury trial rights. See also
 18 State v. Dilts, 337 Or. 645 (2004); State v. Sawatzky, 195 Or.App.
 19 159 (2004); State v. Allen, 202 Or.App. 565 (2005); State v.
 20 Perez, 196 Or.App. 364, rev. allowed 338 Or. 488 (2005). In this
 21 case no jury has found any aggravating factor that would allow for
 22 a greater sentence than the presumptive sentence.

23 Blakely confirmed the Apprendi holding that "the prescribed
 24 statutory maximum" is the offender's presumptive - maximum sentence,
 25 for that is the maximum sentence that may be imposed based on the
 26 jury finding beyond a reasonable doubt. Blakely, 124 S.Ct. at 2537.

1 (citing Apprendi, 530 U.S. at 488).

2 Thus, without the exercise of Plaintiff's Sixth Amendment
 3 jury trial rights, to a finding of any "enhancement fact," his
 4 maximum sentence would have to be in accordance with the sentencing
 5 guidelines' gridblock at 10B, for a maximum of 116-120 months.

6 1. Blakely/Apprendi Impact on Plaintiff's Sentence
 7 Requires A Release No Later Than 90 Months Under
The Mandatory Minimum ORS 137.700(2)(b)(A)
Released By September 7, 2006.

9 Plaintiff's continued imprisonment is an unconstitutional
 10 confinement that requires immediate judicial scrutiny. Plaintiff's
 11 conviction and sentence judgment is invalid and constitutionally
 12 unlawful, under Blakely v. Washington, 542 U.S. 296 (2004) and
 13 Apprendi v. New Jersey, 530 U.S. 466 (2000), in that the imposition
 14 of an upward durational departure sentence on his arson
 15 conviction. This case requires immediate judicial scrutiny, because
 16 under the sentencing guidelines' post Blakely decisions,
 17 his sentence will have been fully served and immediate release is
 18 imminent as of September 7, 2006.

19 Under the sentencing scheme of a "presumptive sentence," the
 20 rules that applied to indeterminate sentences under ORS 161.605(1)
 21 (maximum indeterminate prison sentence that may be imposed for
 22 Class "A" felony is 20 years), is not plausible to the present
 23 "presumptive sentence." This has been established by the United
 24 States Supreme Court's holding in Blakely v. Washington, supra,
 25 and that Court's vacate and remand of Dilts I. See Dilts v.
 26 Oregon, 542 U.S. ___, 124 S.Ct. 2531, 159 L.Ed.2d (2004).

1 Dilts I, held that:

2 "ORS 161.605 established the maximum penalty
3 for the crime that defendant had committed and
4 that defendant's sentence therefore was
 constitutional under Apprendi because it had
 not exceeded that prescribed statutory minimum."

5 Dilts I, 336 Or. at 175-76. The Blakely Court rejected that
6 same proposition upon which Dilts I held: "that the statutory
7 maximum sentence for Apprendi, purposes is the statutory indeter-
8 minate maximum sentence, rather than the guidelines' presumptive
9 sentence." Dilts II, 337 Or. at 649.

10 Dilts II, the state conceded:

11 "Specifically, the state concedes that Blakely
12 rejected the proposition, upon which this court
13 based its holding in Dilts I, that the statutory
 maximum sentence for Apprendi purposes is the
 statutory indeterminate maximum sentence, rather
 than the guidelines' presumptive sentence."

14 Id. at 649.

15 The state cannot now argue that the statutory indeterminate
16 sentence is the maximum sentence. It is well settled that the
17 presumptive sentence in the gridblock is the maximum sentence.
18 In this case that maximum sentence would be 116-120 months.

19

20 II. Post-Prison Supervision is Mandatory Under Oregon's
 Statutory Sentencing Scheme.

21 ORS 137.010(10) provides that a "judgment of conviction that
22 includes a term of imprisonment for a felony committed on or after
23 November 1, 1989, shall state the length of incarceration and the
24 length of post-prison supervision."

25 The statute making post-prison supervision mandatory is ORS

26

1 144.085, which provides in pertinent parts:

2 ORS 144.085 Active parole and post-prison
3 supervision.

4 "(1) All prisoners sentenced to prison for
5 more than 12 months shall serve active periods
6 of parole or post-prison supervision as follows:

7 " * * * * * * * * "

8 "(e) Prisoner sentenced for * * *, or for
9 arson in the first degree under ORS 164.325
10 shall serve three years of active parole or
11 post-prison supervision." (Emphasis added)

12 A. The Mandatory Post-Prison Supervision Must be
13 Deducted From The "Presumptive Sentence" Not
14 The Indeterminate Sentence.

15 Under Oregon's statutory laws it makes post-prison supervis-
16 ion mandatory. Especially, in light of the Blakely/Apprendi,
17 holdings, when properly construed they constructively mandate
18 that the presumptive sentence in accordance with the jury's
19 findings, not the indeterminate sentence is the maximum sentence
20 for the offense upon conviction by the jury. Ibid.

21 ORS 144.085, mandates that all prisoners serving a sentence
22 of more than 12 months "shall" serve a period of post-prison
23 supervision. However, OAR 213-005-0002(4) says that if the sum of
24 the offender's term of incarceration and term of post-prison
25 supervision (PPS) exceed the statutory maximum for his crime as
26 specified in ORS 161.605, the sentencing court must "reduce the
 duration of [PPS] to the extent necessary to conform the total
 sentence length to the statutory maximum." State v. Remme, 173
 Or.App. 476, 566 n. 16 (2001) (dicta, noting that on remand for
 resentencing, "the statutory maximum * * * applies to the 'total
 sentence length,' which includes both the term of incarceration

1 and" PPS). The 1993 Legislature created this provision. Or. Laws
 2 1993, ch. 692, § 1(1). Assuming this amendment to OAR 213-005-
 3 0002(1) is valid, to crimes committed on or after November 1,
 4 1993.

5 OAR 213-005-0002, provides in pertinent part:

6 "(1) A term of community supervision is part of
 7 the sentence for any felony offender who is sentenced
 8 to the legal and physical custody of the Department
 9 or to the supervisory authority. This term of commun-
 10 ity supervision shall be described as post-prison
 11 supervision. Departure on the duration of post-prison
 12 supervision shall not be allowed.

13 "(2) The duration of post-prison supervision
 14 shall be determined by the crime seriousness category
 15 of the most serious current crime of conviction:

16 "(a) One year for Crime Categories 1-3, two
 17 years for Crime Categories 4-6 and three years for
 18 Crime Categories 7-11.

19 " * * * * *

20 "(4) The term of post-prison supervision, when
 21 added to the prison terms, shall not exceed the
 22 statutory maximum indeterminate sentence for the
 23 crime of conviction. When the total duration of any
 24 sentence (prison incarceration and post-prison
 25 supervision) exceeds the statutory maximum indetermi-
 18 nate sentence described in ORS 161.605, the sentencing
 19 judge shall first reduce the duration of post-prison
 20 supervision to the extent necessary to conform the
 21 total sentence length to the statutory maximum."

22 (Emphasis added). The holding in Blakely, that the "statutory
 23 maximum sentence" for Apprendi purposes is the "presumptive
 24 sentence," rather than the indeterminate sentence under ORS
 25 161.605, [see Dilts II, 337 Or. at 649], has constructively
 nullified OAR 213-005-0002(4), to the extent of the language
 specifying ORS 161.605 as the "statutory maximum," from which the
 term of PPS should be deducted.

1 We now know, post Blakely, that the statutory maximum, is
2 not the indeterminate sentence pursuant to ORS 161.605. Thus,
3 the PPS in this case must be deducted from the "presumptive
4 sentence in accordance with the sentencing guidelines' gridblock
5 10B, the range of 116-120 months. Until the Oregon's Legislature
6 amend the sentencing guidelines' defect to comport with the Sixth
7 Amendment jury trial rights, the "indeterminate sentence,"
8 pursuant to ORS 161.605 is inapposite to plaintiffs sentence.

9 B. The Maximum Term of Incarceration in this
10 Case is The 90 Months (Ballot Measure 11)
11 With 30 Months Post-Prison Supervision.

12 ORS 137.700(2)(b)(A), requires that plaintiff serve a
13 mandatory minimum sentence of 90 months, prior to post-prison
14 supervision. The maximum sentence is the presumptive sentence of
15 gridblock 10B, range of 116-120 months. ORS 144.085, speaks in
16 mandatory language (i.e., "shall serve active periods of ... post-
17 prison supervision) giving rise to a liberty interest in a term
18 of community supervision (PPS) as part of his felony sentence.
19 See Baumann v. Arizona Dept. of Corr., 754 F.2d 841, 844 (9th
Cir. 1985).

20 Significantly, a statute that uses mandatory language, e.g.,
21 "shall" creates a liberty interest when a statute or regulation
22 limits the discretion of the decisionmaker and uses "explicitly
23 mandatory language." ORS 144.085, speaks in explicitly mandatory
24 language that "[a]ll prisoners sentenced to prison for more than
25 12 months shall serve active periods of ... post-prison
26 supervision.

1 Plaintiff's sentence under ORS 137.700(2)(b)(A) (Measure 11)
 2 requires he serves a mandatory minimum of 90 months prior to post
 3 prison supervision. The maximum sentence is 116-120 months. The
 4 term of community supervision (PPS) is part of the sentence and
 5 is mandated, pursuant to ORS 144.085 ("All prisoner sentenced ...
 6 shall serve ... PPS"); and ORS 137.010(10) ("A judgment of
 7 conviction that includes a term of imprisonment ... shall state
 8 the length of incarceration and length of PPS").

9 Plaintiff has a liberty interest in being released on post-
 10 prison supervision after serving his mandatory minimum sentence,
 11 under Measure 11, and within the maximum sentence of 116-120
 12 months. See Board of Pardons v. Allen, 483 U.S. 369 (1987); Jago
 13 v. Van Curen, 454 U.S. 14 (1981). Plaintiff's expectation in
 14 release to post-prison supervision is a "protected liberty
 15 interest," by the Fourteenth Amendment to the United States
 16 Constitution. It creates a due process liberty interest as well.
 17 See Greenholtz v. Nebraska, 442 U.S. 1 (1979).

18 **III. The Blakely/Apprendi Impact on Determinate Sentences**
 19 **Under ORS 137.635 And Post-Prison Supervision.**

20 ORS 137.635, the so-called Denny Smith Bill, provides that
 21 "the court shall impose a determinate sentence, the length of
 22 which the court shall determine to the Department of Corrections."
 23 The determinate sentence, however cannot exceed the "presumptive
 24 sentence," except under mandatory minimum sentence (e.g., ORS
 25 137.700 and ORS 161.610). ORS 137.635 does not supersede ORS
 26 144.085, otherwise there exists a conflict among the statutes,

1 whereas ORS 144.085 mandates PPS and ORS 137.635 precludes
 2 "parole."

3 The appellate courts have held that the phrase in ORS 137.
 4 635(1) that a sentence "shall" not exceed the maximum sentence
 5 "provided by the incarcerated term of the guidelines, ORS
 6 137.669, or a departure from the presumptive incarcerative term
 7 for substantial and compelling reasons. ORS 137.671." See State v.
 8 Sullivan, 172 Or.App. 688, 691-92 (2001) (quoting State v. Haydon
 9 116 Or.App. 347, 353 (1992)).

10 It would appear from Oregon's case law that ORS 137.635,
 11 sentences applies strictly to the "incarcerated terms" of the
 12 guidelines. The phrase is generally used, but seldom, if ever,
 13 defined. One court attempted to define "term of incarceration"
 14 as typically referring to one of two closely related concepts in
 15 statutes as: (1) the amount of prison time that a sentencing
 16 court is authorized to impose for a particular offense; or (2)
 17 the amount of prison time that a sentencing court actually impose
 18 as part of a sentence for a particular offender. State ex rel.
 19 Engweiler v. Cook, 197 Or.App. 32, 36 (2005).

20 In the present case the statutory maximum is the presumptive
 21 sentence according to the jury finding of conviction. See
 22 Dilts II, 337 Or. at 649. The "incarcerated term" is the
 23 presumptive maximum sentence less the post-prison supervision
 24 term. However, if any mandatory minimum exists they may exceed
 25 a portion of the term of PPS. In the present case that would be
 26 the 90 months (measure 11) sentence, the present argument makes

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

In the Matter of the Application of)
LARRY LYDELL BELL SR., for a Writ)
of Habeas Corpus:) Case No. CV 06/381
LARRY LYDELL BELL SR.,)
Plaintiff,) PETITION FOR WRIT
v.) OF HABEAS CORPUS
GUY HALL, Superintendent of Two)
Rivers Correctional Institution,)
Defendant.)

Guy Hall is the duly appointed Superintendent at the
Two Rivers Correctional Institution, in Umatilla, Oregon.

1.

Plaintiff is currently incarcerated at the Two Rivers
Correctional Institution, in Umatilla, Oregon.

2.

The cause and pretense of Plaintiff's incarceration is
by virtue of Judgment of the Multnomah County Circuit Court,
in the matter of STATE OF OREGON v. LARRY LYDELL BELL SR.,
Case No. 9903-31898.

3.

Plaintiff is deprived of his constitutional rights that
requires the immediate judicial attention and for which no

1 other timely or adequate remedy is available. The legality of
2 this claim has not been previously adjudged in any prior habeas
3 corpus. The plaintiff's incarceration is unconstitutional for
4 the following reasons:

5 A: The State of Oregon, its agencies, employees, represent-
6 ives, holders of public trusts and officers have refused to
7 adhere to constitutional mandates that required plaintiff be
8 released from the physical custody of the Department of Correct-
9 ions by September 7, 2006, thereby discriminating against him in
10 violation of his civil rights, equal protection of the laws, due
11 process, equitable treatment, liberty interest, excessive impris-
12 onment and cruel and unusual punishment. See Plaintiff's Memo-
13 randum of Law In Support of Petition For Habeas Corpus, attached
14 hereto, and by this reference incorporated herein.

15 B: Plaintiff's continued imprisonment is an unconstitutional
16 confinement that requires immediate judicial scrutiny.
17 Plaintiff's conviction and sentence judgment is invalid and
18 constitutionally unlawful, under Blakely v. Washington, 542 U.S.
19 296 (2004) and Apprendi v. New Jersey, 530 U.S. 466 (2000), in
20 that the imposition of an upward durational departure sentence
21 on his arson conviction. This case requires immediate judicial
22 scrutiny, because under the sentencing guidelines' post Blakely
23 decisions, his sentence will have been fully served and
24 immediate release is imminent as of September 7, 2006. See
25 Plaintiff's Memorandum of Law In Support of Petition For Habeas
26 Corpus, attached hereto, and by this reference incorporated

1 herein.

2 4.

3 Said imprisonment and restraint is not by virtue of any
4 process issued by any court of the United States or by any judge
5 or commissioner has exclussive jurisdiction by virtue of the
6 commencement of an act, suit, or other proceeding in such court
7 and before such judge, commissioner or officer thereof. The
8 alleged inlegality of petitioner/plaintiff's imprisonment and
9 restraint is not by virtue of any judgment or decree of a
10 competent tribunal of civil or criminal jurisdiction wherein
11 such tribunal has exclusive jurisdiction.

12 5.

13 The alleged illegality of the imprisonment and restraint
14 of the plaintiff has not been ruled upon in any other Habeas
15 Corpus action. Plaintiff has sought and exhausted those
16 administrative remedies available to him to the best of his
17 abilities, and plaintiff now believes that invoking the jurisdic-
18 tion of this court to grant a Writ of Habeas Corpus is the most
19 appropriate method of gaining relief from the deprivations detailed
20 herein, and by reference here incorporate the Memorandum of Law
21 In Support of Petition For Habeas Corpus and Demand For Immediate
22 Release, attached hereto and made a part hereof.

23 WHEREFORE, plaintiff respectfully prays that a Writ of Habeas
24 Corpus be granted, directed to the defendant, Commanding him to
25 have the body of the plaintiff brought before your honors, or
26 any one of you, at a time and date specified, together with the

alleged authority for the imprisonment, incarceration and restraint of the plaintiff, and the issued Writ, and that this court grant relief appropriate to redress the deprivations alleged herein, including plaintiff's release from custody, if appropriate, and such other, further relief as the court might deem just, equitable and proper.

Verification

I, the undersigned plaintiff, state under the penalty of perjury that I have prepared, read and know the contents of this petition and that the same is true and correct to the best of my knowledge and beliefs.

DATED this 22nd day of September, 2006.

Respectfully Submitted by

Larry Lydell Bell Sr.
Plaintiff

ATTACHMENT "C"

ROOM	ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME
			to Motion to Produce Grand Jury Notes		
	80	10/13/99	10/12/99 Motion Change of Judge re: Wittmayer		
	81	10/13/99	10/12/99 Affidavit in Support of Motion Related event # 80		
	82	10/15/99	10/15/99 Exhibit Election & 4 Charts (C) PTF 1 Oregon State Of DEF 1 Bell Larry Lydell Sr		
	83	10/18/99	10/18/99 Trial Twelve Person Jury Length of time 2 Day(s) JUD 5 Wilson Janice R		
*	84	10/18/99	10/18/99 Hearing Probation V Scheduled	10/22/99	
	1:15 PM	TJRW			
			WILSON		
	85	10/20/99	10/20/99 Verdict		
	86	10/20/99	10/20/99 Order s/o sent to 11/9 at 1:15; Glty all cts & LIO on ct 1; Remain in Custody		
			10/14/99 Signed JUD 5 Wilson Janice R		
	87	10/20/99	10/14/99 Convicted Lesser Chg Charge # 1		
	88	10/20/99	10/14/99 Finding of Guilty Charge # 2 Charge # 3 Charge # 4		
	89	10/20/99	10/20/99 Hearing Sentencing Scheduled	11/09/99	
	1:15 PM	TJRW			
	90	10/25/99	10/25/99 Order Pre-sent Investigation Sentencing 11-9-99 1:15 pm		
			10/14/99 Signed JUD 5 Wilson Janice R		
	91	10/25/99	10/25/99 Order Court finds reason to believe that def falls w/in criteria for a dangerous off & Dang Off Eval including Psych eval is ordered; Sentencing S/O to 12-8 -99 9 am; Include in PSI Rpt		
			10/22/99 Signed JUD 5 Wilson Janice R		
	92	10/25/99	10/25/99 Hearing Sentencing Scheduled	12/08/99	
	9:00 AM	TJRW			
			Set-Over Court		
	93	11/02/99	11/02/99 Order for Dangerous Offender Evaluation		
			10/24/99 Signed JUD 5 Wilson Janice R		
	94	12/16/99	12/16/99 Hearing Sentencing Scheduled	1/11/00	
	9:00 AM	TJRW			
			SENTENCING ***will be setover***		
	95	12/16/99	12/15/99 Affidavit in Support of Motion		

96 12/16/99 12/16/99 Order Auth Payment Expenses
12/16/99 Allowed
JUD 2 Frantz Julie E
97 1/05/00 1/03/00 Affidavit in Support of Motion
98 1/05/00 1/04/00 Order Auth Payment Expenses